

The Macomb Daily, A Division of Panax Newspapers, Inc. and Robert D. Campbell, Case 7-CA-18315

March 16, 1982

DECISION AND ORDER

BY MEMBERS FANNING, JENKINS, AND
ZIMMERMAN

On December 11, 1981, Administrative Law Judge Phil W. Saunders issued the attached Decision in this proceeding. Thereafter, the General Counsel filed exceptions and a supporting brief and the Respondent filed a responding brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings, and conclusions¹ of the Administrative Law Judge and to adopt his recommended Order.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the complaint be, and it hereby is, dismissed in its entirety.

¹ The General Counsel has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enf'd 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

DECISION

STATEMENT OF THE CASE

PHIL W. SAUNDERS, Administrative Judge: Based on a charge filed by Robert D. Campbell, herein called the Charging Party or Campbell, a complaint was issued on November 13, 1980, against The Macomb Daily, A Division of Panax Newspaper, Inc., herein called Respondent or the Company, alleging a violation of Section 8(a)(1) and (3) of the Act. Respondent filed an answer to the complaint denying it had engaged in the alleged matter, and the Respondent also filed a brief in this matter.

Upon the entire record in the case, and from my observation of the witnesses and their demeanor, I make the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

At all times material herein, Respondent has maintained its principal office and place of business in Mount Clemens, Michigan, and also operates other facilities throughout the State of Michigan engaging in the publication, sale, and distribution of a daily newspaper; Respondent's facility located at Mount Clemens is the only facility involved in this proceeding.

During the year ending December 31, 1979, which period is representative of its operations during all times material hereto, Respondent, in the course and conduct of its newspaper publication, had gross revenues in excess of \$200,000, subscribed to the United Press International, and purchased newsprint valued in excess of \$10,000 from suppliers located outside the State of Michigan.

Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

Newspaper Guild of Detroit, Local 22, The Newspaper Guild, AFL-CIO, herein called the Union or Local 22, is and has been at all times material herein a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

It is alleged in the complaint that on or about April 1, 1980, Respondent, by its agent Ronald Hedley,¹ issued a written reprimand to its employee, Robert D. Campbell, and that Respondent took this action because of Campbell's membership in, sympathies for, and activities on behalf of the Union.

Robert Campbell has been a staff reporter on the Macomb Daily for the past 6 years, and the reprimand at issue herein is the only discipline Campbell has received during his tenure with Respondent.

During the winter and spring of 1980, Respondent and Local 22 were engaged in contract negotiations, and another bargaining session was scheduled between the parties on April 1, 1980. During this period of time, Robert Campbell was vice chairman of the bargaining unit for Local 22 and was a member of their negotiating team.

Campbell testified that when he arrived at work, about 9 a.m. on March 31, 1980, he noticed a paper of some kind in his typewriter and upon reading this document discovered that it was a letter directed to employees proposing a 6-month wage freeze, and the letter was dated as of April 1.² Campbell then called the administrative officer for Local 22, Donald Kummer, and told him about the letter, and then explained to Kummer that since they were being asked to take a wage freeze, it might be possible to "find out" the status of management employees who had accepted a wage increase 3 months

¹ Ronald Hedley is the publisher and chief executive officer for Respondent.

² See G.C. Exh. 2

earlier, and in reply Kummer then told Campbell to go ahead and to find out what the increase was. On the morning here in question, Campbell also talked to a former officer of Local 22, employee Chuck Thomas, about this matter and informed him that he was going to ask somebody in the bookkeeping department if they were aware of whether management employees had received an increase.

Campbell then approached employee Ellen Wojnar, Respondent's bookkeeper, and requested that she check the records in the bookkeeping department and to provide him with the percentage salary increase which management personnel received in January 1980.

The credited evidence shows that Campbell requested this salary information around lunchtime when Nan Fraser, the supervisor of the payroll and bookkeeping department, was out of the office and on her lunchbreak. Ellen Wojnar told Campbell that she did not have the information he was requesting and would not give it to him even if she had such data. Campbell then replied that if she knew how "management was trying to screw her," she would give him this information. Wojnar testified that she was angry and upset as she could have lost her job over the incident, and as a result advised Fraser what had occurred when Fraser returned from lunch. Wojnar stated that neither Campbell nor anyone from the Union had ever requested such information previously.³

When Nan Fraser returned from her lunchbreak on March 31, she immediately noticed that Wojnar was visibly disturbed, and Wojnar then explained to Fraser that she was upset because Bob Campbell had come in while she (Fraser) was out of the office and asked that he be provided with the percentage increase which management people received in January 1980—it is clear that at no time did Campbell request of Fraser the information he sought from Wojnar—Nan Fraser then immediately went to the publisher and chief operations officer, Ronald Hedley, and informed him that Robert Campbell had been in the bookkeeping department during her lunch hour and had asked Ellen Wojnar what percentage salary increase exempt employees received in January 1980, and that Wojnar had refused to give Campbell the information he requested.

Shortly thereafter, Hedley talked to Campbell and explained to him that he had engaged in "gross misconduct" in attempting to induce a bargaining unit book-

keeper (Wojnar) to divulge salary information pertaining to exempt personnel—that in so doing he had jeopardized Wojnar's job—and if she had given out this information, Wojnar probably would have been demoted or possibly discharged for divulging confidential information. Hedley testified that Campbell responded by admitting he had made a mistake and then told him that he "shouldn't have asked for it." Following this discussion, Hedley then issued Campbell a formal written reprimand dated April 1, 1980. The reprimand letter stated, in part, that Campbell was being reprimanded for waiting until the payroll supervisor was out of the office before approaching an employee and requesting her to divulge confidential financial information which pertained to exempt executive staff.⁴

This record shows that at no point during any of the three or four bargaining sessions *prior* to the March 31 incident did Campbell or any representative of the Union request management salary information at the bargaining table, and the April 1 letter of reprimand here in question is the only time Hedley has disciplined a bargaining unit employee for the reason specified in the letter.

As pointed out, article IV of the current collective-bargaining agreement, which contract was being negotiated at the time Campbell received his reprimand, specifies the type of information which Respondent must make available to the Union,⁵ and it appears that article IV of the current contract is virtually identical to a provision dealing with this subject matter contained in the predecessor contract. Moreover, Hedley testified that under normal procedures, Campbell should have requested information from Payroll Supervisor Nan Fraser; stated that information requests were processed through her and she was the proper supervisor to go to for such information. Hedley also stated that Campbell was fully aware of the proper channels of communication between the Union and Respondent relative to requesting information for contract administration and bargaining purposes.

This record shows that in September 1980 Campbell came into Hedley's office and requested that the written reprimand here in question be withdrawn from his file. It appears that Campbell had learned that the Macomb Daily was going to be sold, and he did not want a new employer to see a reprimand letter in his file.

It is also noted that although the Campbell reprimand may not have been discussed at the bargaining table, it did come up in outside discussions between Hedley and Union Administrator Donald Kummer, but no grievance was filed. Moreover, the parties successfully negotiated a new contract, and which included a pay increase for bargaining unit employees.

At the hearing before me, Hedley testified that he considered Campbell's attempt to obtain executive salary information as "surreptitious" and "deceptive," and this was the sole reason for the reprimand.

The General Counsel argues that an employee in Ellen Wojnar's position is not considered a confidential employee as the Board uses that term, but the question of

³ It appears from this record that Nan Fraser routinely handles requests for relevant information from the several union representatives and officers who have employee units with Respondent—that she is responsible for checking authorization cards of new employees and answering questions pertaining to insurance and fringe benefit claims and for insuring that employees are properly placed on the salary schedule, and has also dealt with Campbell on different occasions in the past by providing him with information pertaining to bargaining unit employees. Campbell testified that he would not have requested Ellen Wojnar to give him salary information of nonbargaining unit personnel, but for Hedley's memorandum or letter to employees dated April 1, and which summarized Respondent's proposals to the Union (G.C. Exh. 2). At this juncture in negotiations, Respondent had proposed a 6-month extension of the current contract, and the April 1 letter signed by Hedley was sent to and received by Union Administrator Kummer just prior to a bargaining session scheduled between the parties on April 1, and the letter was then subsequently distributed to employees in their paychecks on April 2 or 3.

⁴ See G.C. Exh. 3.

⁵ Resp. Exh. 1.

whether certain information is restricted information—is a different question in this case, and under Board law we are told that the criterion is not access to labor relations material, but rather the confidential relationship between the employee and the person exercising managerial functions and moreover, that ultimately, the instant case rests on the right in Section 7 itself secured to employees—the right to assist labor organizations and to engage in other concerted activities for the purposes of collective bargaining or other mutual aid or protection.

It is Respondent's position that the reprimand of April 1 was based on Campbell's attempt to circumvent proper channels of communication to obtain confidential and financially sensitive data on executive salaries, and Respondent argues that Campbell was disciplined solely for deliberately waiting until Nan Fraser took her lunch-break and then deviously attempting to obtain confidential information, and that the factual issue of whether Campbell was engaged in deceptive conduct turns largely upon the timing of his visit to Ellen Wojnar, and points out that in this respect the testimony of Campbell and Respondent witnesses seriously conflicts.

Respondent further submits that Campbell was not engaged in protected concerted activity in requesting the financially sensitive information from Wojnar without first attempting to obtain such information either at the bargaining table or through Nan Fraser consistent with his past practice of obtaining information from the employer.

Final Conclusions

It is a well-established principle that an employer violates the Act when it discharges (or disciplines) an employee who it knows was engaged in protected activity even though the employer was motivated by a good-faith, but mistaken, belief that the employee was guilty of misconduct during the course of that activity. Thus, if Campbell had innocently obtained the information and then discussed it with his fellow employees, his conduct would be both concerted and protected and his discharge (or discipline), if based on an honest, but mistaken belief that he had wrongfully obtained said evaluation, would be unlawful. However, if Campbell had *wrongfully* obtained the information, his activities would not be protected the Act and his discharge or reprimand for engaging in such conduct would not be unlawful.⁶

I am in agreement that the record in the instant case warrants the conclusion that Campbell intentionally waited until Nan Fraser was absent from the bookkeeping office before he approached and contacted Ellen

Wojnar. Nan Fraser, Ronald Hedley and Ellen Wojnar all consistently and credibly testified that Campbell made his request during lunchtime. Campbell claims that he contacted Wojnar in the bookkeeping department around 10-10:30 a.m. on March 31. However, the General Counsel made no attempt to rebut the testimony of Respondent's witnesses regarding the timing of Campbell's conversation with Wojnar, and even though Campbell was called as a rebuttal witness. As pointed out, Campbell's silence on rebuttal, in the face of clear and unequivocal testimony that he approached Wojnar during the lunch break, strongly supports the conclusion that he purposely timed his visit to coincide with Nan Fraser's absence.⁷ Moreover, from past dealings with management, Campbell was well aware that Fraser was the proper person to contact in requesting such information, as aforesaid.

In the final analysis, there is no showing in this record that Campbell was reprimanded for any reasons other than those stated in Hedley's April 1 letter. As further indicated, this record is also devoid of any testimony that Hedley singled Campbell out for discipline because of his status as a union representative. During the period here in question, Respondent was engaged in serious negotiations with Local 22, and the issue of what increase, if any, executive personnel had received was not raised by the Union at the bargaining table prior to April 1, and it is quite clear from Hedley's testimony that he expected any request for such information would come across the table and not in the underhanded fashion in which Campbell went about it. In fact, not until the April 1 bargaining session did Kummer ask Hedley whether exempt employees had received an increase, and then Kummer did not ask how much the increase was. Prior to this meeting no *supervisory* or *managerial* person received a request from the Union for any information pertaining to salaries of exempt staff. Indeed, Kummer testi-

⁷ It should be noted that all facts found herein are based on the record as a whole upon my observation of the witnesses. The credibility resolutions herein have been derived from a review of the entire testimonial record and exhibits with due regard for the logic and probability, the demeanor of the witnesses, and the teaching of *N.L.R.B. v. Walton Manufacturing Company & Loganville Pants Co.*, 369 U.S. 404 (1962). As to those witnesses testifying in contradictions of the findings herein, their testimony has been discredited, either as having been in conflict with the testimony of reliable witnesses or because it was in and of itself incredible and unworthy of belief. *All testimony has been reviewed and weighed in the light of the entire record.* In the instant case it should be noted that Campbell contradicted himself in relating exactly what question he put to Ellen Wojnar. On direct examination by the General Counsel, Campbell testified as follows:

Q. I see. And then, my next question is, did you have conversation with an employee there?

A. Yes, I went in and I asked Ellen Wojnar whether she was aware if there had been any pay increase to the management staff earlier that year.

Campbell testified on differently on cross-examination:

Q. Now, your testimony, I want to make sure I understand this. When you addressed Ms. Wojnar, what is it again that you asked her?

A. I asked her if she was aware what the size of the increase paid to management staff on January first had been.

Later on, Campbell testified that he was not certain what specific question he had asked Ellen Wojnar but seemed to recall references to "percentage raise" and "across-the-board" increase.

⁶ In *Bullock's*, 251 NLRB 425 (1980), supplementing 247 NLRB 257 (1980), the Board held that an employer did not violate Sec. 8(a)(1) when it discharged a salesperson who had *wrongfully* obtained confidential employee performance evaluations. The discharged employee had been dissatisfied with her job evaluation and had discussed its contents with other employees in her department. The Board concluded that she was properly terminated for the unauthorized possession and disclosure of confidential contents of her own and coworkers' evaluations. Similarly, in *Clinton Corn Processing Company, a Division of Standard Brands Incorporated*, 253 NLRB 622 (1980), the Board upheld the employer's decision to give a bookkeeper employee a choice of quitting or being fired for having revealed the company's wage scale at a union meeting. The wage scale in this case was deemed confidential.

fied and admitted that requests to see financial records are made during negotiations.

There is simply no basis in the record to support a finding of unlawful motivation. The reprimand letter here in question is the only discipline Campbell has received during his employment with Respondent, and it is clear that he was disciplined for his surreptitious conduct as detailed herein, and there is no evidence that the discipline was motivated for any other reason. I find that Campbell was legally reprimanded for the sole reason that he wrongfully and deceptively sought information concerning the salary increase of management people.

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Respondent has not engaged in any of the unfair labor practices alleged in the complaint.

Upon the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER*

The complaint is hereby dismissed in its entirety.

*In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.